IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6840 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NIRAJ SHITALKUMAR MITTAL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 6840 of 2003

MR KB ANANDJIWALA for Petitioner No. 1

MR JB PARDIWALA for Petitioner No. 1

MR PR ABICHANDANI, APP, for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 16/09/2003

ORAL JUDGEMENT

1. Rule. Learned Additional Public Prosecutor, Mr. Abichandani, waives service of notice of Rule on behalf

of the State.

2. The applicant herein came to be arrested on 22nd June, 2003, at 18.00 hours, in connection with Shaher Kotda Police Station C.R. No.I-178 of 2003 for offences punishable under Sections 498-A, 306 and 114 of Indian Penal Code and Sections 3 and 7 of the Dowry Prohibition Act. In that case, undisputedly, no charge sheet is filed even as on today. The investigating agency had preferred an application before the Metropolitan Magistrate Court No.3 on 15th August, 2003, for extension of time for a further period of 30 days for filing of charge sheet on completion of 60 days from the date of arrest on 22nd August, 2003. The learned Metropolitan Magistrate has ordered that report to be kept with the record. No further order is passed. Subsequently, the applicant approached the learned Metropolitan Magistrate with an application for default bail under Section 167 of the Code of Criminal Procedure, on 22nd August, 2003, and the learned Magistrate rejected that application on August 27, 2003. Thereafter, the applicant has approached this Court with the present application for that very relief on that very ground, although the cause title indicates that the application is under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate, Mr. Anandjiwala, for the applicant and learned Additional Public Prosecutor, Mr. Abichandani, for the State.

3. Mr. Anandjiwala submitted that the offences with which the applicant is charged, namely, Sections 498-A, 306 and 114 of I.P.C. and Sections 3 and 7 of the Dowry Prohibition Act are not punishable with the categories contemplated under clause (i) of proviso (a) to Section 167(2) of the Code of Criminal Procedure and, therefore, the charge sheet has to be filed within 60 days. Beyond that period, if the charge sheet is not filed, the accused-applicant can not be remanded to judicial custody. He has relied on the decision of the Apex Court in case of Rajeev Chaudhary v. State (N.C.T.) of Delhi, as reported in A.I.R. 2001 SC 2369. He submitted that the said judgment has been followed by this Court in Criminal Misc. Application No.4261 of 2001 in Criminal Misc. Application No.2810 of 2001, which has been disposed of by this Court by judgment dated July 3, 2001. He has tendered a copy of the said judgment before this Court. Mr. Anandjiwala, therefore, submitted that the applicant is entitled to bail irrespective of merits of the case.

4. Learned Additional Public Prosecutor, Mr. Abichandani, tried to oppose this application, but could not successfully do so while submitting on question of law, as settled by the Apex Court, and applicability to the facts of the present case.

5. Considering the case as advanced by the learned Advocate for the applicant, there is no dispute about the fact that charge sheet has not been filed in the present case till today. The punishment prescribed for the offences with which the applicant is charged can be tabulated as under :-

(1) 498-A, IPC -	Imprisonment for a term which may extend to three years and shall also be liable to fine.
(2) 306, IPC -	Imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
(3) S. 3 of Dowry Prohi. Act	Imprisonment for a term which shall not be less than five years, and with fine which shall not be less than fifteen thousand rupees or the amoutn of the value of such dowry, whichever is more.

6. Even, according to the investigating agency also, the period for filing of charge sheet expired after 60 days on 22nd August, 2003 and, therefore, a report was submitted to the learned Magistrate for extension of time for filing of charge sheet for a period of 30 days and the learned Magistrate, exercising his judicial wisdom, ordered that report to be kept with the record. Now, if the position as settled in this regard is considered, the Apex Court in the case of Rajeev Chaudhary, while considering the punishment prescribed under Section 386 of I.P.C., has observed that clause (i) of proviso (a) to Section 167(2) of the Code of Criminal Procedure would cover offence for which imprisonment is for a clear period of 10 years or more. Under Section 386 of I.P.C., punishment prescribed can extend to 10 years, i.e. it could also be less than 10 years. The Apex Court observed that the said clause (i) of proviso (a) to Section 167(2) would be applicable in cases where the investigation relates to an offence punishable with (1)

death, (2) imprisonment for life or (3)l imprisonment for a term of not less than 10 years. The Apex Court also observed that it would not cover the offence for which punishment could be imprisonment for less than 10 years. Thus, in the instant case, as can be seen from the above table, the punishment prescribed is nowhere 10 years or more and, therefore, the charge sheet ought to have been filed before completion of 60 days, failing which, the applicant would be entitled to default bail as he cannot be remanded to judicial custody thereafter.

6.1 It was argued that the maximum punishment is 10 years and, therefore, it can be awarded, which would be covered by the above clause. As regards the punishment prescribed under Section 3 of the Dowry Prohibition Act also, it was argued that minimum punishment prescribed is 5 years and it could be more than 10 years as well as. These two arguments cannot be accepted for the reason that, in case of Section 3 of the Dowry Prohibition Act, the punishment prescribed is minimum 5 years. It could be six years, seven years, eight years or anything between 5 years and 10 years as well, which would be certainly less than ten years. It cannot be said that the punishment prescribed is of a term of not less than ten years. Therefore, considering the ratio as laid won in the case of Rajeev Chaudhary (supra), this contention cannot be accepted. So far as other offences are concerned, the punishment prescribed is pari materia with the punishment prescribed in Section 386 of I.P.C., which was under consideration of the Apex Court and, therefore also, the contention cannot be accepted.

7. Similar view is taken by this Court in Criminal Misc. Application No.4261 of 2001 in judgment dated 03.07.2001.

8. The result is that the application deserves acceptance and, hence, the following order :-

9. The application is allowed and the applicant is ordered to be released on bail in connection with Crime Register No.I-178 of 2003 of Shaher Kotda Police Station on his executing a bond of Rs.10000/- (Rupees ten thousand only) with one surety of the like amount to the satisfaction of the lower Court and subject to the conditions that he shall,

(a) not take undue advantage of his liberty or abuse his liberty;

(b) not act in a manner injurious to the interest of

the prosecution;

(c) maintain law and order;

(d) mark his presence before Shaher Kotda Police Station on second Sunday of every even numbered English calendar month between 9.00 a.m. and 2.00 p.m.;

(e) furnish the address of his residence at the time of execution of the bond and shall not change the residence without prior permission of this Court;

(f) surrender his passport, if any, to the lower court within a week.

10. If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to issue warrant or to take appropriate action in the matter.

11. Bail before and to the satisfaction of the lower Court having jurisdiction to try the case.

12. Rule is made absolute accordingly.

13. Direct service is permitted.

[A.L. DAVE, J.]

gt